IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

CMA.No. 254 of 2000()

AS.689/1994 of SUB COURT,NEYYATTINKARA
OS.152/1979 of I ADDL.M.C.,NEYYATTINKARA

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APPELLANT:

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1. PADMANABHAN NADAR DASSAN NADAR, (DIED)
VELLOORKONATHU RODARIKATHU
KADAYARA PUTHEN VEEDU , MARANALLOOR DESOM
MARANALLOOR VILLAGE

*2 D. SURESH KUMAR,
VELLOORKONATHU RODARIKATHU
KADAYARA PUTHEN VEEDU, MARANALLOOR DESOM
MARANALLOOR VILLAGE

*3 D. JAYAKUMAR OF -DO- -DO-

(ADDL. RESPONDENTS 2 & 3 ARE IMPLEADED AS LEGAL HEIRS OF THE APPELLANT AS PER ORDER DATED 24-1-2006 IN I.A. NO. 3499/2004)

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SMT.SREELEKHA PUTHALATH

RESPONDENTS:

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1. GOURI PILLA OMANA AMMA, PERUMULLOOR PALATHUKONAT KIZHAKKEPUTHEN VEEDU, MARANALLOOR DESOM, MARANALLOOR VILLAGE NEYYATTINKARA TALUK

2. GOURI PILLA SARADA AMMA, VELLOOR KONATHU ROADARIKATHU PUTHEN VEEDU MARANALLOOR DESOM, MARANALLOOR VILLAGE, NEYYATTINKARA TALUK

3. PANKAJAKSHI PILLA RATHNAMMA VELLOOR KONATHU ROADARIKATHU MELE
` VEEDU MARANALLOOR DESOM, MARANALLOOR VILLAGE, NEYYATTINKARA TALUK

4. NARAYANA PILLAI MANIKANTAN NAIR -DO- -DO-

5. ALICE ARUNDHATHI, KARANAMKOTTU PUTHUVAL PUTHENVEEDU, MARANALLOOR DESOM MARANALLOR VILAGE

6. VELUKKUTTY NADAR, LAKSHMANA NADAR, -DO- -DO-

7. BHAGEERATHI PILLA BHAGAVATHI PILLA, VELOORKONATHU ROADARIKATHU KADAYARA PUTHEN VEEDU MARANALLOOR DESOM MARANALLOR VILAGE

8. PAINKILI W/O KOCHUKUNJU NADAR, KALLUVETTANKUZHI KADAYARA PUTHEN VEEDU, VIZHINJAM DESOM, KOTTUKAL VILLAGE

9. PAINKILI PRASANNA OF -DO- -DO-

10. PAINKILI GIRIJA OF -DO- -DO-

11. SARADA AMMA WIFE OF LATE SOMSEKHARAN NAIR, VELOORKONATHU ROADARIKATHU PUTHEN VEEDU, MARANALLOR DESOM AND VILLAGE

12. SADASIVAN NAIR SON OF LATE SOMASEKHARAN NAIR OF -DO- -DO-

13. N. MURALEEDHARAN T.C 21/1965, KEEZHATHIL VEEDU, THALIYAL WARD THIRUVANANTHAPURAM

14. N.SURESHKUMAR OF -DO- -DO-

15.N.SANTHOSH KUMAR OF -DO- -DO-

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.M.A. NO. 254 OF 2000

ORDER IN C M..P. 6833/2000 IN CMA 254/2000

DISMISSED

13-6-2007 SD/- K.PADMANABHAN NAIR,
JUDGE

ORDER IN C.M.P. 1171/2002 IN CMA 254/2000

DISMISSED

13-6-2007 SD/- K.PADMANABHAN NAIR,
JUDGE

ORDER IN C.M.P. 4110/2002 IN CMA 254/2000

DISMISSED

13-6-2007 SD/- K.PADMANABHAN NAIR,
JUDGE

ORDER IN C.M.P. 1182/2003 IN CMA 254/2000

DISMISSED

13-6-2007 SD/- K.PADMANABHAN NAIR,
JUDGE

ORDER IN I.A NO. 949/2003 IN CMA 254/2000

DISMISSED

13-6-2007 SD/- K.PADMANABHAN NAIR,
JUDGE

//True copy//

K.PADMANABHAN NAIR . J.

C.M.A No. 254 of 2000

Dated this the 13th day of June 2007

JUDGMENT

The 1st defendant in O.S. 152/1979 on the file of the I Addl. Munsiff's Court Neyyattinkara is the appellant in the civil miscellaneous appeal. The appeal is filed challenging an order of remand passed by the lower appellate court by which it set aside a judgment and decree passed by the trial court and remanded the case for fresh disposal.

2. The suit was one for declaration of title and possession over C schedule property which was subsequently amended for recovery of D schedule property. The case of the plaintiffs was that the property originally belonged to Piriyakottu Plavarathala tarwad. In the year 1103 M.E there was a partition in the family by which plaint A schedule property was allotted to one Madhavi Pillai mother of the plaintiff and the 2nd defendant. It was also averred that the plaint schedule properties were outstanding on a mortgage. It is further contended that in the year 1123 M.E Ext.A4 Partition deed was effected and the suit property was allotted to the share of the plaintiff and the 2nd defendant. The 1st plaintiff and the 2nd defendant filed O.S.403/1959 for redemption of the mortgage and the suit was decreed. It was averred that there was an oral partition agreement between the 1st plaintiff and the 2nd defendant, by which an extent of 42 cents of land on the northern side of plaint A schedule was

allotted to the 1st plaintiff and 36 cents on the immediate southern side was allotted to the 2nd defendant. It was further averred that the 1st plaintiff gifted that property to the 2nd plaintiff under Exts.A2 and A3. It is further averred that 15 cents of property further 42 cents i.e plaint C schedule was sold by them to the 1st defendant. It is averred that subsequently the 1st defendant who purchased 15 cents attempted to trespass into the remaining 27 cents Hence, this suit for declaration of title and possession. Subsequently, the suit was amended alleging that during the pendency of the suit, the 1st defendant trespassed into the C schedule property and constructed a temporary shed. Several number of times, Advocate Commissioners were appointed. Ext.C1 to C6 are the report and plans filed by them. Initially the suit was dismissed on 28-2-1989. The plaintiffs filed A.S. 118/84. The appeal was allowed setting aside the decree and judgment passed by the trial court. The suit was remanded for fresh disposal. After remand, on behalf of the plaintiffs PWs 1 and 2 were examined and Exts. A6 to A7 proved and marked. The Advocate Commissioner is examined as DW2 who had submitted Exts C8 and C8(a) The trial court dismissed the suit. Challenging the decree and judgment plaintiffs filed A.S. 689/1994 before the Appellate Court. In that appeal I.A No. 650/2000 was filed to admit additional evidence. The lower appellate court allowed that petition and remanded the case. It was also directed that the documents produced along with the petition will be

forwarded to the trial court. It was also directed to remit the Commissioner's Report (Exts C8 & C8(a)). and also directed the very same commissioner for submitting revised plan and report after identifying the suit properties with the help of title deeds. Challenging that judgment the C.M.A is filed.

3.The learned counsel appearing for the appellant strenuously argued before me that the lower appellate court went wrong in allowing I.A. 650/2000 for adducing additional evidence. It is argued that the suit was filed as early as in 1979 and there was enough and more time for the plaintiffs to adduce evidence. It is contended that the property claimed by the plaintiffs is actually form part of the property lying on the southern side and the attempt of the plaintiffs is to evict the appellant who purchased 15 cents from the 1st plaintiff and the same may not be allowed. As rightly observed by the lower appellate court the suit is pending for more than 28years,but that alone is a good reason to dismiss the suit. The fact that A schedule properties were allotted to Madhavi Pillai and others in the year 1103 M.E by the partition deed is not disputed. That document was not produced before the trial court. One of the fresh documents produced before the lower appellate court was copy of that that partition deed. The further case of the plaintiffs was that in the partition deed of 1103 M.E a mistake was committed regarding the mentioning of the survey number

The case of the 2nd plaintiff at present is that the suit properties are comprised in survey No.134/1. But in some of the title deeds the survey numbers are stated as 132/1 and 135/1. The lower appellate court considered all these matters and accepted the partition deed of 1103 M.E as additional evidence and remanded the matter with a specific direction that the confusion regarding the survey number should also to be considered. I do not find any illegality or impropriety in the judgment of the lower appellate court As rightly observed by the lower appellate court the appellant purchased property from the 1st plaintiff. The case of the 2nd plaintiff is that the 15 cents sold to the appellant was a part of a larger extent of having 42 cents and they are entitled to get a declaration regarding the balance 27 cents I do not find any reason to interfere with the judgment of the lower appellate court. So the C.M. Appeal is only to be dismissed.

In the result the appeal is dismissed.

sd/-

K.PADMANABHAN NAIR, JUDGE

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